

US EPA ARCHIVE DOCUMENT

# ESA MOU for Oil Spill Response

An Example of Emergency Formal  
Consultation in Action

# ESA MOU with EPA

- EPA/Coastguard and U.S. Fish and Wildlife Service (Service) signed a MOU stipulating emergency consultation procedures for oil spill response under the Endangered Species Act (ESA)
- Background on MOU
  - Signed June 2001
  - Consultation is required under the ESA, the MOU facilitates the consultation process
  - Coastguard has completed emergency consultations but EPA has few or none
- ESA Consultation is a completely separate action from Natural Resource Damage Assessment (NRDA) under CERCLA and OPA
  - ESA consultation addresses Take of listed species
  - NRDA addresses

# Service Roles

- Service Contaminants biologist role in MOU
  - Contaminants biologists are Service's point of contact during spill response
  - EPA can contact Contaminants biologist directly or
  - Contaminants biologist can serve on the Incident Command Team
- Service Endangered Species biologist role in MOU
  - Assist EPA and the Contaminants Biologist in avoiding and minimizing adverse impacts to T&E/critical habitat
  - Provide guidance on the consultation process
  - Participate in on-site response planning/wildlife teams

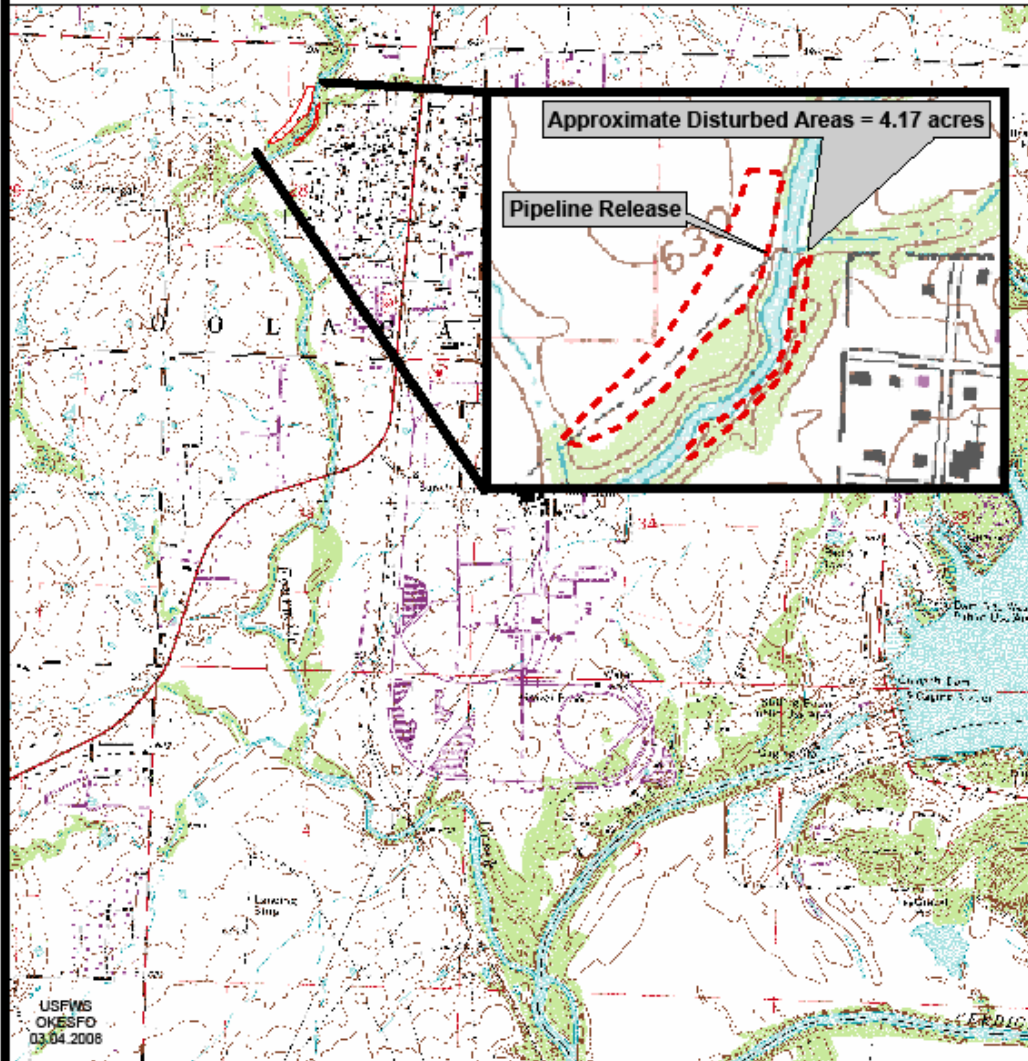
# Oologah Gasoline Spill Details

- ~3,000 bbls of gasoline from pipeline (January 5, 2008)
- Unnamed creek of Verdigris River
- Spill length: ~2.5 miles (most impacts w/in 1<sup>st</sup> mile)
- Fish and mussel kill: 3,703 total fish and suspected mussel kill (assessment underway)
- Coordination: EPA, Service, State of OK, RP (Magellan Midstream Partners, etc)
- Response issues to the American Burying Beetle (ABB)
- Resulting consultation with EPA

# Magellan Gasoline Spill Response

Rogers County, Oklahoma  
01.05.2008

0 0.25 0.5 1 Miles



Approximate Disturbed Areas = 4.17 acres

Pipeline Release

USFWS  
OKESFO  
03.04.2008



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# American Burying Beetle

- 1-1.5 inches long
- Unique markings
- Annual species
- Highly mobile
- Nocturnal
- Active & inactive period
- Carrion feeder
- Reproduces on carrion



Pictures courtesy of: Gary Schnell, University of Oklahoma



Pictures courtesy of: Wyatt Hoback, University of Nebraska



Pictures courtesy of: Lou Peritti, Williams Park Zoo



# Emergency Consultation Overview

## EPA and FWS

- Federal agencies- must consult with the Service on their actions that may affect federally listed species or critical habitat
  - Federal Action Agency- is EPA because they have oversight of actions taken during response
  - Federal action-is response activities, not the spill itself
- Federally listed species- includes both threatened and endangered (T&E) species listed under the ESA, candidate species should also be addressed but this is not required
- Critical habitat- designated areas that are essential to the survival of the species
- Occupied suitable habitat- areas containing a threatened or endangered species



# Emergency Consultation Overview

## Cont.

Two levels of Consultation- Informal and Formal

- Informal Consultation
  - Federal action agency must notify the Service immediately if they identify potential adverse affects to T&E/critical habitat from response actions
  - Service provides recommendations to avoid or minimize adverse affects to T&E/critical habitat during response actions
    - Service can not stand in the way of the response efforts
  - Response action is taken by Federal action agency/RP, and all Service recommendations feasible to implement should be incorporated
    - If all adverse affects to T&E/critical habitat can be avoided then consultation is concluded
    - If not then formal consultation is needed to address “take”

# Emergency Consultation Overview

## Cont.

- Formal Consultation
  - If adverse affects cannot be avoided then some form of “take” has or will occur and needs to be addressed
    - Federal action agency should initiate formal consultation after the emergency response actions are implemented and completed
      - Note: these response actions should have been discussed with the Service already
    - Federal action agency submits Biologic Assessment (BA) to the Service
    - Service provides an emergency Biological Opinion (BO) that documents the emergency response on T&E/critical habitat
    - Service determines level of take, and jeopardy or adverse modification
    - Service issues BO and incidental take statement to Federal action agency

# Oologah Spill Consultation

- Response action that triggered consultation
  - Soil disturbance – which in this case could not have been avoided or minimized
  - Soil disturbance from RESPONSE resulted in potential take of ABB
- EPA was Action Agency
  - Via OPA EPA has direct oversight of spill response on inland spills.
  - During this spill response the FWS acted as EPA's eyes and ears with daily reports to EPA On Scene Coordinator (OSC).



# Oologah Spill Consultation Cont.

- Service issued BO – included incidental take statement and conservation measures
- Service recommendation- donate to the ABB fund as a monetary conservation measure.
  - Due to the life history of this species, proactive avoidance/minimization measures were not feasible
- RP is voluntarily donating ~ \$25K to ABB fund to offset impacts.
  - This amount was based on land values of acres disturbed during the response